

V489

CERTIFIED MAIL

March 10, 1993

Ms. Kathy LaRosa
2939-A Pulima Drive
Hilo, HI 96720

Dear Ms. LaRosa:

Variance Application (V ⁹²91-11)
Petitioner: Kathy LaRosa
Request: Rear Yard Setback
TMK: 2-5-43: 14, South Hilo

According to your application, as amended, and related information, you have decided to sell this dwelling which you purchased in 1986 from Mrs. Rex Wills through McCormack Realty of Kona. In the process of preparing to sell, it was discovered that the house encroached into a rear yard and contained a second unit downstairs as well. Both are violations of the County Zoning Code. Besides court proceedings which you have initiated, you are also pursuing a variance from the Zoning Code requirements to permit the building to remain where sited although you were not responsible for the construction of the intruding section of the dwelling (a double carport with upstairs lanai), nor the downstairs living unit. The improper building setback and the second living unit downstairs were already in place when you purchased the building; the fact that they were in violation of County Codes was not made known to you by the previous owner (Mrs. Wills) or her realtor (McCormack of Kona). It has been determined that the violation is an intrusion into a rear yard rather than the side yard conceptualized by the applicant's representative's amended letter. (The city's zone map shows a future road along the property's west boundary resulting in its opposite boundary being the rear).

It has been established that:

1. The dwelling is now essentially an illegal duplex with a complete living unit added downstairs as well as upstairs.
2. The covered double carport with full lanai above it extends toward the north east side boundary such that it is 8 feet from the boundary where it should end 14 feet from the boundary (this includes the allowable (6) six feet projection).

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3. The above items, 1 and 2, were constructed after 1970 without building permits, during the ownership of the dwelling by Mr. and Mrs. Rex Wills (husband is now deceased). The applicant, Ms. LaRosa, was not at all responsible for these additions being built.
4. Members of the AhHeong family who sold the dwelling to the Wills' after 1970 recall the house was neither a duplex nor contained the attached carport/lanai.

Based on a review of the application and the circumstances surrounding this home and the violations of the County Codes, the Director has decided that this variance request should be approved with conditions. The reasons for approval are as follows:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprive the owner of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of that property.

The applicant (present owner) is not at all responsible for the code violations. It is instead, the previous owner (the Wills') who built both the carport/lanai addition and the second living unit downstairs and did them without obtaining the necessary building permits.

Therefore, although the carport/lanai projects beyond permissible limits, the neighbor most affected by the violation has stated that he does not object to the proximity of that structure to his property (which is vacant). However, the second living unit occupying the entire downstairs (or ground) floor, was also built without a building permit and does not meet Building Code nor Zoning Code Standards. Consequently, in its present state, it must be removed as a condition of this variance (carport/lanai situation) being granted. The condition is described in more detail at the conclusion of this letter.

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ALTERNATIVES

There are few practical alternatives now, in view of the drastic renovations which have taken place over the years. The main entrance is now on the east side of the house, off the upstairs lanai, although the north stairs and entrance still exist. Removal of the illegal portion of the carport/lanai would be relatively costly, and virtually eliminate the purpose and use of the lanai.

The severity of the violation is great, but it affects only one neighbor who does not object to the intrusion. Its effect on any neighbors is presently negligible and because of the area's remoteness and lack of proper access it may well remain undeveloped for decades or longer.

INTENT AND PURPOSE

The intent and purpose of the building setback regulation is to afford an amount of open space, air, light and related spatial considerations between buildings and property lines common and appropriate to a community or locale.

Although there is a serious intrusion into the required rear yard, the surrounding area is mostly vacant land, with low density, agricultural development. Essentially today, the extent of the violation although not minor, does not "bother" adjacent properties, since there are no other buildings nearby.

Based on the foregoing findings, the variance request would be consistent with the General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character and adjoining properties.

The Planning Director has concluded that this request be approved subject to the following conditions:

1. The petitioner, their assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The downstairs living areas shall immediately cease being used as a habitable unit unless it conforms completely in every aspect to the Zoning, Housing and Building Codes.

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3. The applicant shall proceed immediately to remove the interior and exterior features which render the downstairs areas a habitable unit (including but not limited to the kitchen and its plumbing and electrical fixtures, living room, bedrooms), or construct them where permitted to code standards following normal building permit procedures.
4. The applicant shall inform this department by letter every six months as to the status of their compliance with items 2 and 3, above, commencing with an initial letter within 60 days of receipt of this variance permit.
5. All other applicable state and county rules and regulations shall be complied with. Should any of the foregoing conditions not be met, the variance shall be deemed null and void.

Sincerely,

Virginia Goldstein

VIRGINIA GOLDSTEIN
Planning Director

DT:mjs
7821D

cc: Mr. Mark Van Pernis

✓ Public Works

DEPT. La Rosa. Samit

cc: Olsen

P.W.